

Applicant: Jabar, et al.  
Serial No.: 10/056,803  
Filed: January 24, 2002  
For: METHOD OF INCREASING CROP YIELD

Examiner: Grinber, Anne Marie  
Group: 1661

Office Action Mailed - 08/07/2003  
Response Filed - 11/07/2003

### **REMARKS**

Claims 1-20 are pending in the application.

Claims 1-6, 8, 13, 15, and 18-20 have been amended.

Claim 14 has been canceled.

No new matter is added by the claim amendments. Support for the amendments is found throughout the specification, as well as in claim 14 as originally filed.

#### *Elections/Restrictions*

The Applicants acknowledge withdrawal of the restriction requirement made in Paper No. 5.

#### *Claim Objections*

Claims 4-6 and 13-20 have been amended as to recite multiple dependent claims that are in alternative form. As such, the Applicants respectfully request that the objection to claims 4-6 and 13-20 be withdrawn.

Claims 1-3 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No: 10/150,500. The Examiner contends that the subject Applications are not patentably distinct from one another. The Applicants respectfully disagree. Applicants submit that Application No: 10/150,500 is directed to methods for inhibiting fungal growth on a growing agricultural or horticultural plant, while the instant Application is directed to methods for increasing the yield of a crop, accelerating the emergence of a crop, and accelerating the maturity of a crop. Application No: 10/150,500 would not render obvious the instant invention and visa versa. Thus, the inventions are patentably distinct.

#### *Rejection of claims under 35 U.S.C. 112*

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Claims 1-3, respectively, have been amended to recite methods for “increasing the yield of a crop”, “accelerating the emergence of a crop”, and “accelerating the maturity of a crop” as to provide proper antecedent basis. Claim 8 has been amended to recite “said coating comprising a peptide-polysaccharide complex comprising a peptide and a polysaccharide” as to provide antecedent basis for “the total peptide-polysaccharide complex” in line 3. Support for these amendments is found in the claims as originally filed.

The Applicants submit that the claims as amended obviate the rejection and respectfully request that the rejection of claims 1-3 and 8 under 35 U.S.C. 112 be withdrawn.

*Rejection of claims under 35 U.S.C. 102(b)*

Claims 1-3 and 8-9 have been rejected under 35 U.S.C. 102(b) as being anticipated by Cottrell et al.

The Applicants have amended claims 1-3 and 8-9 to recite the claim limitation “wherein said peptide is zein”. Support for these amendments is found throughout the Specification (see examples) as well as in Claim 14 as originally filed.

The Applicants submit that Cottrell et al. does not teach a composition comprising zein and, as such, the amendments to claims 1-3 and 8-9 obviate the rejection. Accordingly, the Applicants respectfully request that the rejection be withdrawn.

*Rejection of claims under 35 U.S.C. 102(e)*

Claims 1-3 and 7 have been rejected under 35 U.S.C. 102(e) as being anticipated by A.W. Morgan. The Applicants submit that Morgan does not teach a composition comprising zein. As such, the amendment of the claims 1-3 and 7 to recite the claim limitation “wherein said peptide is zein” obviate the rejection. Accordingly, the Applicants respectfully request that the rejection be withdrawn.

*Rejection of claims under 35 U.S.C. 103(a)*

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Claims 10-12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cottrell et al. in view of Stewart et al. The Applicants submit that neither Stewart et al. nor Cottrell et al. teach the composition of the present invention. As indicated above, Cottrell et al. does not teach a composition comprising zein. As such, the combination of Stewart et al. and Cortell et al. does not teach each and every element of the claimed invention.

Accordingly, the Applicants respectfully request that the rejection of claims 10-12 under 35 U.S.C. 103(a) be withdrawn.

In view of the foregoing, applicant respectfully submits that all claims are in condition for allowance. Early and favorable action is requested.

The Examiner is authorized to charge any fee deficiencies or credit any overpayments associated with this submission to the Nixon Peabody LLP Deposit Account No. 50-0850.

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Customer No.: 26770

Respectfully submitted,



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